



San Diego City Attorney **MICHAEL J. AGUIRRE**

NEWS RELEASE

FOR IMMEDIATE RELEASE: February 21, 2007

Contact: Maria Velasquez, Communications Director (619) 235-5725 mvelasquez@sandiego.gov

ANOTHER COURT VICTORY FOR VOTERS ON DONATION OF MT. SOLEDAD VETERAN'S WAR MEMORIAL TO FEDERAL GOVERNMENT

City Attorney's Successful Appeal Prevails

San Diego, CA: City voters who approved donating the Mt. Soledad Veteran's War Memorial to the federal government withstood another significant court challenge today. The California Supreme Court declined to hear the case on behalf of the late Philip K. Paulson who was seeking a reversal of a lower court's ruling by the Fourth Court of Appeal.

In October 2005, San Diego Superior Court Judge Patricia Cowett invalidated Proposition A, which called for a donation of the Mt. Soledad Veteran's War Memorial to the federal government. Judge Cowett ruled that the land donation violated the State Constitution. *Philip K. Paulson v. Charles Abdelnour, et al.*, GIC849667.

The City Attorney's Office appealed Judge Cowett's decision to the California Fourth District Court of Appeal in response to 76% of voters who passed Proposition A in July 2005.

On November 30, 2006, the California Fourth District Court of Appeal issued a unanimous decision reversing Judge Cowett's ruling and upholding the will of the people to donate the property to the federal government. The Court could not find objective evidence that the voters intended to donate the property in order to preserve the cross—which would have benefited religion in violation of the State Constitution and the First Amendment to the U.S. Constitution.

Paulson's attorney, James McElroy, subsequently filed a Petition for Review to the California Supreme Court. The American Civil Liberties Union (ACLU) also filed a request to depublish the appellate court's decision and the California Supreme Court denied it today.

The federal government acquired the property via eminent domain on August 14, 2006. That legislative action is currently being challenged by McElroy in federal court in the matter of *Steve Trunk, et al. v. City of San Diego, et al.*, Case No. 06cv1597. However, if the City were to reacquire ownership of the memorial, the City is now free to donate the property to the federal government as a result of today's California Supreme Court action.

(MORE)

Recent City Attorney media releases can be accessed on the San Diego City Attorney's home page located on the Internet at <http://www.sandiegocityattorney.org>

1200 Third Avenue, Suite 1620, San Diego, California 92101-4188 (619) 236-6220

Critical to today's Court action was the San Diego City Attorney's successful motion filed in July 2006, with U.S. Supreme Court Justice Anthony M. Kennedy who agreed to suspend a Federal Court's ruling to remove the Mt. Soledad Cross by August 1, 2006, in order to allow the appeals to proceed without the threat of fines for not removing the cross. The Court was acting on the original federal lawsuit filed in 1989 by Paulson challenging the display of the cross on City property.

###